



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[EPA-HQ-OAR-2013-0479; FRL-9912-00-OAR]**

**RIN 2060-AS25**

**Regulation of Fuels and Fuel Additives: Extension of Compliance and Attest Engagement Reporting Deadlines for 2013 Renewable Fuel Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action on two components of its annual rulemaking to establish the 2014 renewable fuels standards under Clean Air Act 211(o). The two components are an extension of the compliance demonstration deadline for the 2013 renewable fuel standards, and the associated deadline for submission of attest engagement reports for the 2013 renewable fuel standards. The new deadlines are September 30, 2014 and January 30, 2015, respectively. This action ensures timely amendment of existing deadlines, before compliance obligations would otherwise go into effect. The EPA intends to finalize the remaining portion of its rulemaking to establish the 2014 renewable fuel standards shortly.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2013-0479. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are

available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: 734-214-4131; Fax number: 734-214-4816; E-mail address: [macallister.julia@epa.gov](mailto:macallister.julia@epa.gov), or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214-4333; E-mail address [OTAQ@epa.gov](mailto:OTAQ@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Purpose**

The EPA is today taking action to amend existing regulatory deadlines for obligated parties under the Renewable Fuel Standards (RFS) program to submit reports demonstrating their compliance with the 2013 RFS percentage standards, and to submit corresponding attest engagement reports.

We received comments on our November 29, 2013 proposed rulemaking to establish the 2014 RFS standards<sup>1</sup> reiterating the importance to obligated parties of knowing their RFS obligations for 2014 prior to the compliance demonstration deadline for the 2013 RFS standards.

---

<sup>1</sup> 78 FR 71732 (November 29, 2013).

The EPA recognized the value of this timing to obligated parties in the 2013 standards final rule, and for that reason delayed the normally applicable February 28, 2014 compliance demonstration deadline to June 30, 2014 for the 2013 RFS standards.<sup>2</sup> We reasoned at that time that an extension to June 30, 2014 would be sufficient in light of the expected date of issuance of the 2014 annual RFS rule.

However, in light of the fact that the EPA has not yet issued the 2014 annual standards rule, we believe it is appropriate to provide a further extension of the 2013 compliance demonstration deadline. The new deadline is September 30, 2014. Additionally, we are extending the deadline for submitting the corresponding attest engagement reports to January 30, 2015. Although these regulatory changes were not specifically proposed in the 2014 annual standards rule, we believe that they are appropriate as a logical outgrowth of the proposed rule. The EPA received several comments on the proposed rule emphasizing the need for the EPA to promulgate the 2014 RFS standards quickly and the need for obligated parties to know their obligations for the following year when finalizing their 2013 compliance demonstrations. As noted above, the EPA itself recognized the value to obligated parties of knowing their obligations for 2014 prior to having to demonstrate compliance with their 2013 RFS requirements. This is because, once the 2014 RFS standards are known, obligated parties may choose to consider the impact of the new standards on their 2013 RFS compliance approach, including how many 2013 Renewable Identification Numbers (RINs) they can carry-forward (there is a 20% limit based on the 2014 standard) for purposes of complying with the 2014 RFS standards.

---

<sup>2</sup> 78 FR 49794, 49800 (August 15, 2013).

The 2014 RFS rulemaking has been more time consuming than originally anticipated, involving receipt of over 300,000 comments, concerning numerous specific issues related to the 2014 standards which the EPA needs, and wishes, to thoroughly consider and respond to. Given the need for the EPA to weigh these issues carefully, prior to taking final action on the 2014 RFS standards, the EPA believes it best to further extend the existing June 30, 2014 compliance demonstration deadline and associated attest engagement report deadline for the 2013 RFS standards. While we do not believe that the EPA is constrained legally to extend the deadline, we do believe it is appropriate to do so in this instance. It will allow the EPA time to complete its work on the 2014 renewable fuel standards rule in a thorough manner, while also providing time between the expected date of finalizing that rule and the new 2013 compliance deadline which will be helpful to obligated parties. While this final rule is a logical outgrowth of the 2014 RFS proposed rule, and the circumstances of completing that rule, the EPA needs to take final action on this rule separately from the other aspects of the 2014 rule, in order that the actions taken in this rule are effective prior to the existing 2013 RFS standards compliance deadline of June 30, 2014.

We are setting the effective date for this rule as the date that it is published in the Federal Register. Section 553(d) of the Administrative Procedure Act (APA), generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. However, the EPA is issuing this final rule under CAA section 307(d), and that provision specifies that the APA does not apply, with only limited exceptions that do not include Section 553(d). The EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on the date of publication in the Federal Register. The APA provides that the requirements of section 553(d) do not apply where the rule in question “relieves

a restriction” or where the EPA finds and publishes with the rule a determination that “good cause” exists that warrants an exception. We believe that the deadline extensions finalized today will operate to relieve restrictions, and that good cause exists for making this rule effective prior to the deadlines currently in effect for submission of the 2013 renewable fuel standards’ compliance demonstration report and the associated attest engagement reports, for the reasons described above.

## **II. Affected Entities**

Entities potentially affected by this direct final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS <sup>1</sup> Codes	SIC <sup>2</sup> Codes	Examples of Potentially Regulated Entities
Industry	324110	2911	Petroleum Refineries
Industry	325193	2869	Ethyl alcohol manufacturing
Industry	325199	2869	Other basic organic chemical manufacturing
Industry	424690	5169	Chemical and allied products merchant wholesalers
Industry	424710	5171	Petroleum bulk stations and terminals
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers
Industry	454319	5989	Other fuel dealers

<sup>1</sup> North American Industry Classification System (NAICS)

<sup>2</sup> Standard Industrial Classification (SIC) system code

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

### **III. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

There are no new information collection requirements associated with this rulemaking. The extension of the existing regulatory deadlines for obligated parties under the Renewable Fuel Standards (RFS) program impose no new or different reporting requirements on regulated parties. The existing information collection requests (ICR) that apply to the RFS program are sufficient to address the reporting requirements in the regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of

small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule amends the existing regulatory deadlines for obligated parties under the Renewable Fuel Standards (RFS) program to submit reports demonstrating their compliance with the 2013 RFS percentage standards, and to submit corresponding attest engagement reports. This action ensures timely amendment of existing deadlines, before compliance obligations would otherwise go into effect. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this rule will not impose any additional requirements on small entities beyond those already analyzed.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.



This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely extends the otherwise applicable reporting deadlines.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action amends the existing regulatory deadlines for obligated parties under the Renewable Fuel Standards (RFS) program to submit reports demonstrating their compliance with the 2013 RFS percentage standards, and to submit corresponding attest engagement reports. The new deadlines only apply to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **IV. Statutory Authority**

Statutory authority for this action comes from sections 211 and 301(a) of the Clean Air Act, 42 U.S.C 7545 and 7601(a).

**List of Subjects in 40 CFR Part 80**

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum.

Dated: June 6, 2014.

Gina McCarthy,  
Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

**PART 80--REGULATION OF FUELS AND FUEL ADDITIVES**

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

2. Section 80.1451 is amended by revising paragraph (a)(1)(xiv) to read as follows:

**§ 80.1451 What are the reporting requirements under the RFS program?**

(a) \* \* \*

(1) \* \* \*

(xiv) For the 2013 compliance year, annual compliance reports shall be submitted by September 30, 2014.

\* \* \* \* \*

3. Section 80.1464 is amended by revising paragraph (g) to read as follows:

**§80.1464 What are the attest engagement requirements under the RFS program?**

\* \* \* \* \*

(g) For the 2013 compliance year, reports required under this section shall be submitted to EPA by January 30, 2015.

[FR Doc. 2014-14019 Filed 06/13/2014 at 8:45 am; Publication Date: 06/16/2014]